IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 364

J. H. SMITH RICHARDSON and LUNSFORD RICHARDSON, JR., Executors of the Last Will and Testament of Lunsford Richardson, Sr., deceased, and the VICK CHEMICAL COMPANY, a corporation organized under the laws of the State of Delaware,

Petitioners,

vs.

ROBERT R. KING, SR., ROBERT G. VAUGHN, SR., and AUBREY L. BROOKS, sole Trustees for the Home and Foreign Missions and Benevolent Causes of the Presbyterian Church under the Will of Lunsford Richardson, Sr., deceased; THE EXECUTIVE COMMITTEE OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the State of Georgia; THE EXECUTIVE COMMITTEE OF MINISTERIAL EDUCATION AND RELIEF OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES, a corporation organized and existing under the laws of the Commonwealth of Kentucky; and THE PRESBYTERIAN COMMITTEE OF PUBLICATION, a corporation organized and existing under the laws of the State of Virginia; on behalf of themselves and all other beneficiaries, similarly situated, of the charitable trust created under Item V of the Will of Lunsford Richardson, Sr.,

Respondents.

REPLY BRIEF OF PETITIONERS

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The brief for respondents fails to mention or discuss four important North Carolina decisions strongly relied

upon by petitioners to show that the court below failed to follow the applicable local law; *St. James* v. *Bagley,* 138 N. C. 384; *Williams* v. *Thompson,* 216 N. C. 292 (the bequest was absolute and not in trust); *Teachey* v. *Gurley,* 214 N. C. 288; *Edwards* v. *Lemmond,* 136 N. C. 329 (the action was barred).

Three of these cases Judge SOPER stressed in his opinion.

I.

A reading of respondents' Summary of Facts (pp. 2-7) might give the Court the impression that upon the testator's death the interest of Mrs. Richardson and the family in the First Presbyterian Church of Greensboro, North Carolina, ceased.

The facts are quite to the contrary. The entire Richardson family were devoutly interested in the Church. This did not cease with the testator's death (R. 255). As Judge SOPER well says (R. 291):

> "The members of the Richardson family were devoted to the church, as Mrs. Richardson's father and one of her brothers had been its ministers. During the period subsequent to the transfer of 1923, the family's gifts to the local church totalled one million dollars."

Furthermore, the circumstances surrounding the transaction in question in 1923 not only show Mrs. Richardson's interest in the Church but show her wish to carry out the "desire" of her husband. On page 4 of their brief respondents set forth Mrs. Richardson's letter of November 10, 1922. Petitioners rely upon this letter when read in

connection with the fifth item of the will as showing the precise situation. In the first sentence of that item the testator bequeathed an 8/100 interest in the Vick Chemical Company to his widow outright. In the next two sentences the testator stated his "desire" that upon his wife's death said interest be divided between the Church and the children. Under North Carolina law, *Hardy* v. *Hardy, et al.*, 174 N. C. 505, and *Springs* v. *Springs,* 182 N. C. 484, Mrs. Richardson could have taken the position that she was the absolute owner of the 8/100 interest and that the precatory words used in the second sentence of the fifth item of the will did not in any way limit such absolute ownership.

Wishing to carry out her husband's "desire", whether legally bound to do so or not, Mrs. Richardson wrote the letter of November 10, 1922. In the Church's acceptance (R. 27-28) it agreed:

> "That in order to more fully carry out the wishes of Mr. Richardson that the proceeds of this fund should be used for the benevolent causes of the church, we pledge ourselves to the Trustees of the church that the church will always give in addition to our apportionment for the benevolent causes, at least $2400.00 a year to these causes • • •."

In consummating this transaction the parties did not rely solely upon their own judgment in interpreting the provisions of the will and their rights thereunder. The transaction came before three eminent attorneys of Greensboro, North Carolina. Colonel F. P. Hobgood, "an eminent member of the Greensboro bar" (R. 115) advised Mrs. Richardson that the things done by her were legal, and she had a right to rely upon that advice and did rely thereon. A. M. Scales acted as attorney for the First

Presbyterian Church (Tr. 112). One of the Trustees, R. R. King, "an outstanding lawyer" (R. 135), executed the bill of sale (R. 250-252).

These North Carolina lawyers of outstanding ability and character considered the transaction contemporaneously with the sale. Yet nearly twenty years later the federal judges (SOPER, *J.*, dissenting) held that these eminent counsel made a mistake of law. The fact that the trial judge and one of the judges of the Circuit Court are members of the North Carolina bar is of little importance in view of the fact that the law is well settled as is pointed out in the petition herein and further of the practical construction given by all parties and attorneys at the time of the transaction nearly twenty years ago. This is especially true when the lips of principal witnesses have been sealed by death and the memory of others dimmed by age. *Hammond* v. *Hopkins,* 143 U. S. 224; *Teachey* v. *Gurley,* 214 N. C. 288, 294 (1938).

II.

The questions of law are of general public interest, involving as they do the application of fundamental principles of the law of trusts, estates and unincorporated religious bodies, which are peculiarly matters of local competence. Where similar legal questions were involved, that is whether a trust was established under the laws of the State of New Jersey, and the Circuit Court of Appeals divided, this Court granted certiorari on the ground that it was of great public importance that the law be settled, and after hearing reversed the decision of the Circuit Court. *Fidelity Trust Co.* v. *Field,* 311 U. S. 169, 180-181.

III.

The statute and decisions cited by respondents (pp. 8-9) in answer to petitioners' contention that the gift was outright to the First Presbyterian Church of Greensboro are not applicable.

C. S. 4035(a) cited by respondents was passed in 1925, two years after the transaction in question was entered into. It does not apply to this transaction.

Thornton v. *Harris,* 140 N. C. 498, held only that the defendant had no legal claim to the property, saying, page 500: "But it may well be inquired into, upon proper proceedings and by the proper parties, whether the plaintiffs have any claims to hold the possession, upon their own showing, except against mere trespassers." It does not help respondents.

In *McLeod* v. *Jones,* 159 N. C. 74, the Court held there were no trusts declared or contemplated, but the bequest was an outright gift to a well-ascertained charity. The Court cited *St. James* v. *Bagley,* 138 N. C. 384, relied on by petitioners to show that the gift was outright to the First Presbyterian Church of Greensboro.

Thomas v. *Clay,* 187 N. C. 778, 783, decided in 1924, one year after the sale in question and one year before C. S. 4035 was enacted, is clearly inapplicable, as the point there involved was the validity of the bequest, which was held to be indefinite and uncertain and hence void.

Keith v. *Scales,* 124 N. C. 497, 517, and *Hass* v. *Hass,* 195 N. C. 734, hold only that a latent ambiguity as to the *cestui que* trust or trustee or devisee is explainable.

The other three cases cited generally hold that the intent of the testator or donor must be gathered from the entire instrument, and if clearly expressed therein, controls. Petitioners do not question this but say the entire Will (R. 239-245), shows that the testator intended to make a gift absolute to the Church rather than create a trust (R. 288-289).

It is significant that respondents do not discuss or even mention the two North Carolina cases strongly relied upon by petitioners and which Judge SOPER held established that no trust was created and governed this case, namely, *St. James* v. *Bagley*, 138 N. C. 384, and *Williams* v. *Thompson*, 216 N. C. 292.

IV.

Respondents attempt to answer petitioners' point II that the sale was valid and enforcible by citing seven North Carolina decisions. The facts in these decisions distinguish them from the case at bar. *Ward* v. *Brandt*, 62 N. C. 71, principally relied upon by the Circuit Court of Appeals, involved confiscation by the Confederacy of enemy property, and its application to the case at bar seems remote.

Respondents fail to show that the action is not barred under the applicable North Carolina statutes and decisions. As pointed out in the petition (p. 16), the Circuit Court of Appeals expressly held that a constructive trust was impressed upon the remainder in the hands of the holder of the life estate and her transferees. Having so found, it was bound to follow the North Carolina decision of *Teachey* v. *Gurley*, 214 N. C. 288, and hold that the action was barred ten years after the wrong was committed. Such bar applied not only to the trustees but to the beneficiaries under the trust, if any. *Carswell* v. *Creswell*, 217 N. C. 40, 46.

Respondents fail to discuss or distinguish these most important and controlling North Carolina cases.

The North Carolina decisions cited in respondents' brief (p. 11) hold that a remainderman is not entitled to possession until the death of the life tenant and is therefore under no legal obligation to sue at an earlier date, although he has the right to invoke the aid of the court at any time to prevent or remedy a violation of the trust. These cases are not applicable, however, where the remaindermen voluntarily transferred their interest. The remaindermen here took action. So did the life tenant. If the transfer of the stock and the disposition of the proceeds of sale constituted a breach of trust and gave rise to a constructive trust impressed upon the stock in the hands of the purchasers, it took place in 1923 when they acquired it and limitations began to run in that year (R. 291-292).

In *Muse* v. *Hathaway,* 193 N. C. 227 (1927), a case decided later than any case cited by respondents, the Court says (p. 230), "The life interest does not prevent the statute from running."

Respondents also failed to discuss and distinguish *Edwards* v. *Lemmond,* 136 N. C. 329, supporting petitioners' position that this action is barred against the petitioning executors.

V.

Discussing the liability of the defendant corporation, respondents (Brief, p. 11) state that the statute relied upon by petitioners is inapplicable, indicating that the stock in question was held in the name of the decedent.

Actually, the stock in question was not held in the name of the decedent but had been transferred March 12, 1921,

into the name of the Executors and Trustees (R. 39). The statute was, therefore, applicable and the cases relied upon by respondents inapplicable.

Finally, it is significant that not once do respondents attempt to point out any respects in which Judge SOPER's opinion does not correctly set forth the applicable North Carolina law which should have been followed by the federal courts in this case where jurisdiction is based on diversity of citizenship. Neither do they attempt to distinguish the North Carolina decisions therein cited and strongly relied on by petitioners.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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